

POWER DECLARATION

EXHIBIT 1

Wong, Wai - Vol. 1

February 20, 2008

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MILAGROS IMPORTS LIMITED, a)	
New York corporation,)	
)	
Plaintiff,)	
)	
-against-)	NO. 07 CV 3215 (SHS)
)	
PROGRESS VANTAGE LIMITED, a)	
Foreign corporation,)	
)	
Defendant.)	

DEPOSITION UPON ORAL EXAMINATION
OF
WAI WONG

10:07 A.M. - 12:27 P.M. & 1:39 P.M. - 5:41 P.M.

Wednesday, February 20, 2008

600 University Street, Suite 3600

Seattle, Washington

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1 APPEARANCES:

2
3 FOR THE PLAINTIFF:

VANESSA SORIANO POWER

4 Attorney of STOEL RIVES

5 600 University Street, Suite 3600

6 Seattle, Washington 98101

7
8 FOR THE DEFENDANT:

BENJAMIN L. FELCHER LEAVITT

9 Attorney of STORCH, AMINI, MUNVES

10 2 Grand Central Tower

11 New York, New York 10017

12
13 ALSO PRESENT:

CHUK HUNG LIN

14
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21
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24
25
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I N D E X

EXAMINATION

PAGE

Ms. Power

6

I N D E X E X H I B I T

EXHIBIT NO. DESCRIPTION

PAGE

1 2-page 2/15/2008 Virtual Exhibition
document.

32

2 2-page 2/15/2008 Virtual Exhibition
document.

36

3 1-page November 7, 1997 letter.

45

4 17-page Answer And Counterclaim.

62

5 3-page 10/2/03 letter.

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EXHIBIT NO.	DESCRIPTION	PAGE
6	13-page Defendant and Counterclaim - Plaintiff Progress Vantage Limited's Reply To The Second Discovery Request Of Plaintiff - Counterclaim - Defendant Milagros Limited; 1-page Certification; 1-page Affidavit of Service.	82
7	Document from Christensen, O'Connor, Johnson & Kindness. (PVL 05714-05737)	90
8	10 pages of Invoices. (PVL 00176-00185)	104
9	3-page Invoice. (PVL 00173-00175)	113
10	5-page Patent application. (PVL 05819-05823)	117
11	1-page Specimen.	118

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EXHIBIT NO.	DESCRIPTION	PAGE
12	1-page November 22, 2006 e-mail. (MIL 000091)	133
13	1-page MIL Order From 2003 - 2006. (PVL 00171)	142
14	2 pages of Invoices. (PVL 00186-00187)	143
15	4 pages of photographs.	160
16	5-page Milagros Imports LTD. Footwear Development Sheet. (MIL 002979-002983)	164
17	1-page August 30, 2004 e-mail with attachments. (MIL 002674-002681)	168

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1 BE IT REMEMBERED that on Wednesday, February 20,
2 2008, at 10:07 a.m. at 600 University Street, Suite 3600,
3 Seattle, Washington, before LORRAINE M. MILLAY, Notary
4 Public in and for the State of Washington, appeared WAI
5 WONG, the witness herein;

6 WHEREUPON, the following proceedings were had,
7 to wit:

8
9 WAI WONG, having been first duly sworn by
10 the Notary, testified as follows:

11
12 EXAMINATION

13 BY MS. POWER:

14 Q Can you state your full name for the record?

15 A Wong Wai. Or, Wai Wong. That's my full name. And William
16 is just the name that we usually use but is not in my
17 passport.

18 Q And as I mentioned earlier, I'm Vanessa Power. I represent
19 Milagros in this matter.

20 Have you ever been deposed before, Mr. Wong?

21 A No.

22 Q Just for sake of background in this deposition, only one of
23 us can ask or answer a question at a time.

24 You need to answer audibly with either a yes or a no
25 or a full explanation answer, so that the court reporter

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1 can take down everything that is said.

2 And if you need a break at any time, as long as
3 there's no question pending, you can ask me for a break.

4 A Okay.

5 Q Are you taking any medication today that might interfere
6 with your ability to testify fully and truthfully?

7 A No.

8 Q And am I correct that English is not your first language?

9 A That's correct.

10 Q Do you have any concerns about your ability to understand
11 or answer my questions in English fully today?

12 A No.

13 Q What did you do to prepare for your deposition?

14 A Well, I spoke to Ben, my lawyer, and went through a few
15 documents.

16 Q When did you meet with Mr. Leavitt?

17 A Yesterday.

18 Q For how long?

19 A For three, four hours. Three to four hours.

20 Q What documents did you look at?

21 A What do you call those documents? I'm sorry. Just a few
22 pages that Ben prepared for me.

23 Q Do you remember what was on those documents?

24 MR. LEAVITT: I'm going to object and direct him
25 not to answer on privilege grounds.

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1 Q What do you remember, as you sit here today? What damages
2 are you seeking?

3 A The loss of profit over last two years, I guess, over the
4 period that Irene start the lawsuit. And all the expense,
5 all the damage that Irene's running BETTA is causing us.

6 Q What is that?

7 A Again, lost sales and lost profit. We believe we can do
8 much better if we had the brand back at the time.

9 Q What do you mean lost sales?

10 A We had agreement with another person in the States that we
11 will start to distribute the brand ourself instead of using
12 Irene, and we had a few customers very interested in the
13 brand and in our product which can generate significant
14 amount of sales and profit, but we have to give that up
15 because Irene just wouldn't give up.

16 Q Who was your agreement with?

17 A The person's name is Tom Williams.

18 Q Who is Tom Williams? What does he do?

19 A He's one of the senior partner at a company called Elan
20 Polo in St. Louis, and he's very experienced, very
21 well-known in the industry.

22 Q Did you have a -- you said you had an agreement with him;
23 is that right?

24 A Yeah.

25 Q Was it a written agreement?

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1 A It was a written agreement, but right before we signed
2 agreement we found out that Irene was suing us, so
3 agreement wasn't signed.

4 Q Was a copy of that agreement provided to your lawyer for
5 production in this case?

6 A No. I didn't think that was relevant.

7 Q You didn't think that it was relevant to who owned the mark
8 in the United States that you maybe had another agreement
9 with someone else to sell under the mark?

10 A Well, I think right now we are debating the ownership of
11 the brand, that's the most important case at the moment,
12 and how I use the brand later on would be another issue.

13 MS. POWER: We would ask that a copy of that
14 agreement be produced.

15 MR. LEAVITT: We'll take it under advisement.

16 MS. POWER: Thank you.

17 Q (By Ms. Power) Mr. Wong, you've mentioned two different
18 companies, Progress and Goddess. Am I correct that
19 Progress is Progress Vantage Limited?

20 A That's right.

21 Q What type of company is that, such as a partnership or a
22 corporation?

23 A It's a corporation, company registry in Hong Kong.

24 Q What is your position at Progress?

25 A Well, I'm joint ownership or 50 percent ownership of that

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1 company, as well as director of the company.

2 Q Who is the other 50 percent owner?

3 A Ms. Lin is.

4 Q And you're referring to Lynn Wong?

5 A That's right. Well, official name just Lin Chuk Hung.

6 Lynn Wong is just name we use.

7 Q Okay. So, Lin Chuk Hung?

8 A Yeah.

9 Q Okay. And is Ms. Hung's ownership -- may I call her
10 Ms. Wong today?

11 A Yeah.

12 Q Is her ownership also 50 percent?

13 A That's right.

14 Q When was Progress started?

15 A I can't remember the exact date. I think it's 2000 or '99,
16 but I can go through the document and find that out.

17 Q But approximately 1999 or 2000?

18 A Yeah.

19 Q And who started the company?

20 A We did.

21 Q You and Ms. Wong?

22 A That's right.

23 Q What was the purpose of the business when you started it?

24 A What do you mean by purpose?

25 Q What were you going to do with this business?

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1 Q And she told you that she wanted to use the knowledge that
2 she had gained over the years to start her own company;
3 right?

4 A Correct.

5 Q And you were supportive of her business plans; right?

6 A Yes. We gave her a loan to start her business. And we
7 help her to find another person to loan the same amount as
8 we loaned her. And in many ways we help her to get
9 furniture, to get the Empire State Building rental.

10 That's why I was shipping her products that she
11 doesn't have to -- she didn't have to pay us until she
12 received payment from customers, and some orders or some
13 invoices was up to 120 days that we made shipment before we
14 get payment.

15 Q Why did you do all this?

16 A We wanted to have somebody help us to build up the brand in
17 the States.

18 Q What brand?

19 A BETTA.

20 Q Did you tell Irene that?

21 A Yes.

22 Q When?

23 A That's when she was putting the company together.

24 Q When was that?

25 A I don't remember the time or the date, but before Milagros

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1 actually incorporated.

2 Q Did you have discussions in person?

3 A Yes.

4 Q Where?

5 A Well, from time to time she came to Hong Kong when she was
6 still working for Ben Berger, we discussed about it. And
7 couple of times I came to New York and we talked about it,
8 too.

9 Q And what did you tell her?

10 A We told her we want to help her to start a business and we
11 have a brand name we want to distribute in the States, that
12 we got agreement from Mr. Kim Gray who support for me to
13 use the brand and we were going to register the brand in
14 the States.

15 Q Why did you want to work with Irene?

16 A She's willing to distribute our brand. And at that time it
17 was -- we didn't have the knowledge or ability or time to
18 come over to United States to set up a new company and do
19 the distribution, and we trusted her, she has the ability
20 to do that, that's the reason we supported her and help her
21 out.

22 Q At that time was Progress doing any business in the United
23 States?

24 A Yes. That's the time we had significant amount of business
25 from Ben Berger, as well as we got business from other

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1 customers which is still going.

2 Q And at that time, is it correct that it was some time in
3 2003?

4 A I don't remember exact date. Sorry.

5 Q So you don't remember when you spoke with Irene about --

6 A The time before Milagros set up, incorporated.

7 Q During that time before Milagros was incorporated was
8 Progress manufacturing any footwear bearing the BETTA mark
9 that was being sold in the United States?

10 A No.

11 Q And had Progress ever sold any footwear bearing the BETTA
12 mark in the U.S. before that date?

13 A Sorry?

14 Q Had Progress ever, before Milagros was incorporated, sold
15 footwear bearing the BETTA mark in the U.S.?

16 A No.

17 Q You said that you loaned Irene money; is that right?

18 A Yes.

19 Q You loaned her \$25,000; correct?

20 A Correct.

21 Q And that loan has been repaid; is that right?

22 A Correct.

23 Q What was your understanding of the terms of that loan?
24 What was the purpose of it?

25 A To help her to set up a company, the initial fund for the

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1 company.

2 Q Did you think that you or Progress would have an ownership
3 interest in Milagros because you were loaning her \$25,000?

4 A No. She asked me to be a partner, I said no.

5 Q Has Progress made any other loans to Irene or Milagros
6 other than that \$25,000 that's been repaid?

7 A No.

8 Q Am I correct that John Lau also loaned --

9 A Correct.

10 Q -- money to Milagros?

11 A Correct.

12 Q Do you know how much that was?

13 A Same amount, \$25,000.

14 Q Do you know the terms of that loan?

15 A No.

16 Q You also testified that you helped Milagros get office
17 space; is that right?

18 A Correct.

19 Q What exactly did you do?

20 A We wrote a guarantee letter to the Empire State Building,
21 telling them we have full support to Milagros, which was
22 request by Empire State Building in order to give them a
23 lease.

24 Q You also said you helped Milagros acquire furniture; is
25 that right?

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1 Q So you did not accept Irene's proposal; is that correct?

2 A Correct.

3 Q In paragraph 55 you allege that Progress agreed to license
4 Torres to be the exclusive distributor of its footwear
5 products in the United States bearing its BETTA mark. Do
6 you see that reference?

7 A Yes.

8 Q Who proposed that Irene be Progress' exclusive distributor?

9 A I did.

10 Q When did you propose that?

11 A That's when she was planning to start a business, when it
12 didn't have the name as Milagros. She was telling us she
13 wanted to start a business, so I proposed to her that we
14 have a brand name registered in Hong Kong and China, then I
15 can manufacture BETTA brand and I can register BETTA brand
16 and she distribute it.

17 Q When exactly did you propose this? What date?

18 A I don't have the date. That's between the period of time
19 that she was thinking about leaving Ben Berger and some
20 time before that we made the loan before -- well, right
21 before she left.

22 Definitely before she left Ben Berger and she was
23 thinking -- between the time she was thinking leaving and
24 the time she actually left Ben Berger.

25 Q Was that proposal verbally or in writing?

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1 A Verbally.

2 Q So you admit that there's no written agreement between
3 Progress and Milagros for the distribution of BETTA,
4 products bearing the BETTA mark in the U.S.; correct?

5 A Correct.

6 Q Is it your contention that there was an oral license
7 agreement between Progress and Milagros for the
8 distribution of products bearing the BETTA mark in the
9 United States?

10 A I'm sorry. I didn't understand exact what contention
11 means, but it was my intention that we register the brand
12 and we own the brand and she help us to distribute it.

13 And actually when we initially discussed it, it was
14 just talking about how we can do. And later on, when she
15 actually left Ben Berger, she did send an e-mail to us
16 asking about the details of this brand name and clearly see
17 through the e-mail she asked about licensing fees, she
18 asked about royalty, she asked about the details, forms and
19 history of the brand, and asking about who's going to
20 register the brand, and we all answered it, so it was
21 clearly showing that she knew we own the brand.

22 Q Am I correct, though, that it's your belief that there is
23 an -- or there was an oral license agreement between
24 Progress and Milagros for the distribution of products
25 bearing the BETTA mark in the U.S.?

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1 A I don't know how to say it legally. Do you mean that --
2 well, can you explain me to the term oral licensing? Is
3 there a term -- you asked me earlier whether it's oral
4 licensing or not.

5 As I said, I didn't have the knowledge of anything
6 about licensing at that time. All I knew was that we had a
7 gentleman agreement that we own the brand and she
8 distribute for us.

9 And only now, after this case, I get to know the
10 details and the legal requirement for licensing.

11 Q Earlier you admitted that there's no written license
12 agreement between Milagros and Progress; correct?

13 A Correct.

14 Q I'm trying to understand whether you believed that there
15 was an oral license agreement between Milagros and
16 Progress.

17 A Yes, I do believe in that.

18 Q On what date did you make that agreement?

19 A I don't remember date, but based on the e-mail that we talk
20 about it. There was an e-mail, she specifically asked
21 about the detail of BETTA's license. And I believe if you
22 said oral agreement or oral licensing, I think that can be
23 the date.

24 Personally, I believe that's the date that we have
25 agreement on that. We told her she can use it, she doesn't

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1 have to pay royalty to us, she doesn't have to pay
2 licensing fee to us, and I believe that's the date.

3 Q You're saying that the date of an e-mail when -- excuse me.

4 You're saying that the date that Irene sent you an
5 e-mail --

6 A Mm-hm.

7 Q -- asking about the terms of a license --

8 A Yes.

9 Q -- is the date that this oral license agreement was made?

10 A I believe so.

11 Q Did the license agreement become effective on that same
12 date?

13 A Well, it was always our intention to go that way. So I
14 don't know how to say when the exact date became effective.
15 It's always our intention to help Irene to set up a
16 business and distribute BETTA.

17 Q Is it your belief that the same date that this alleged oral
18 license agreement was made is the same date that that
19 agreement took effect?

20 A I believe we started this kind of agreement even before
21 that.

22 Q On what date?

23 A I don't remember exact date, but we always discuss about
24 it. And I only know it was my intention to do that, and
25 she knew we supported her since the beginning. So as I

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1 said, I didn't have the knowledge about legal contract of
2 licensing.

3 Only we told her we are registering the brand and she
4 will distribute. And the conversation was going on and on
5 for a long time, even before she left Ben Berger.

6 So I can't tell you the exact date that it commenced
7 or it become effective. It's always our intention to
8 support her to set up the business.

9 Q Would you agree that this alleged oral license agreement
10 became effective the same date that it was entered into?

11 A Well, the conversation was going on and on for a period of
12 time, so it's always there. I don't really understand what
13 you mean when the date became effective.

14 Q Who are the parties to the alleged agreement?

15 A In the beginning it's more personal between Irene and I.
16 She didn't even have a company name.

17 Q At some point did that change?

18 A Yes. We help her to set up Milagros, then we become
19 Progress Vantage and Milagros.

20 Q So are you saying that there were two agreements, the first
21 was between you and Irene and the second agreement was
22 between Milagros and Progress or is this all the same
23 agreement?

24 MR. LEAVITT: Objection to form. You can
25 answer.

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1 A I believe it's all the same.

2 Q (By Ms. Power) Was this an exclusive or a nonexclusive
3 agreement?

4 A We didn't specifically discuss about it.

5 Q Was it transferable or nontransferable?

6 MR. LEAVITT: Objection to form.

7 A We didn't discuss it either.

8 Q (By Ms. Power) Did you discuss the payment of royalties?

9 A Yes.

10 Q And what were the terms regarding the payment of royalties?

11 A We told her we will support her. We didn't need her to pay
12 us royalty.

13 Q Why is that?

14 A We wanted someone to help us to build up the brand. And in
15 order for her to re-invest the profit into the business --
16 well, in order for Milagros to make profit and grow, we
17 want her to keep the profit or re-invest it into Milagros
18 and help us to sell more BETTA slippers or BETTA items.

19 Q What was the geographic term of the alleged agreement?

20 A United States.

21 Q Was the alleged agreement only for the use of the BETTA
22 mark or was it for any other mark?

23 A For our agreement, only the BETTA mark.

24 Q And under this alleged agreement, what use of the BETTA
25 mark was Milagros allowed?

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1 MR. LEAVITT: Objection to form. You can
2 answer.

3 A We allowed Milagros to use the mark to use on socks, which
4 is a supplier we know, and we let her to use -- to sell
5 some other slippers from a manufacturer called Flicker, who
6 we know have fairly high standard and they can make some
7 items that our factories are not very good at. And we also
8 agreed Milagros to use the mark and make small items
9 through Topper.

10 Q (By Ms. Power) Is there anything in writing that sets
11 forth the scope of what Milagros was permitted to do using
12 the BETTA mark under this alleged agreement?

13 A No.

14 Q What was the length of the alleged agreement?

15 A We didn't discuss it.

16 Q What did you expect it to be?

17 A We expect to review it every two years.

18 Q Did you discuss the circumstances under which this alleged
19 agreement could be terminated?

20 A No.

21 Q Did you discuss providing notice to Milagros before this
22 alleged agreement could be terminated?

23 A No.

24 Q Were there any terms related to giving notice before
25 terminating the agreement?

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1 Q (By Ms. Power) When were the terms of this alleged oral
2 agreement confirmed?

3 MR. LEAVITT: Objection to form. You can
4 answer.

5 A That's the -- do you have a copy of the answer we gave? We
6 replied this e-mail with all the details. I believe that's
7 the details we confirmed.

8 Q (By Ms. Power) Other than this e-mail that's been marked
9 as Exhibit 5 and your response to this e-mail, are there
10 any other written communications that you believe explain
11 the terms of this alleged oral license?

12 A There are lots of e-mails that we talk about the license,
13 and I do think there somewhere in the document that you can
14 see that we discuss about the license.

15 Q What I'm trying to understand is the date of this license.
16 So am I correct in understanding that this license that
17 you're alleging was entered into before October of 2003;
18 correct?

19 A Yes. Correct.

20 Q Mr. Wong, you're aware that Milagros used other
21 manufacturers to manufacture products for it bearing the
22 BETTA mark; correct?

23 A Correct.

24 MS. POWER: This is six, I believe.

25 (EXHIBIT NO. 6 MARKED)

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1 Q (By Ms. Power) Mr. Wong, you've been handed what's been
2 marked as Exhibit 6. I'll give you a moment to review the
3 document. When you're finished, please let me know if you
4 recognize it.

5 A Yes.

6 Q Am I correct that this is a document that was prepared in
7 response to discovery requests from Milagros in this
8 lawsuit?

9 A Right.

10 Q On the second to last page of this exhibit there's a
11 certification. Is that your signature on the
12 certification?

13 A Yes.

14 Q Turn to page 8 of Exhibit 6. In response to Request For
15 Admission No. 1, there's a reference to knowledge of
16 Milagros' licensed use of manufacturers other than PVL.

17 A Sorry. You mean the response?

18 Q Mm-hm. I'm looking at the response to Request For
19 Admission No. 1.

20 A Mm-hm.

21 Q And there's a sentence that starts on the fourth line of
22 that response, it starts with "Subject to the foregoing
23 objections."

24 A Mm-hm. Yes.

25 Q And so, I'm asking about this reference that follows that

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1 where Progress admits that it possessed knowledge of
2 Milagros' licensed use of manufacturers other than PVL. Do
3 you see that reference?

4 A Yes.

5 Q What do you mean by licensed use of manufacturers?

6 A Well, that means Milagros allowed to use people we list
7 earlier, Flicker, Topper, et cetera, manufacturers other
8 than PVL to produce products carrying BETTA name and sell
9 in the States.

10 Q So you're saying that Milagros had a license to use other
11 manufacturers?

12 A Yes.

13 Q Is that also part of this alleged oral license?

14 A Yes.

15 Q Was that communicated to Milagros?

16 A Yes. That was discussed way before Milagros was set up.

17 Q Do you recall the date?

18 A That's the period even before Irene left Ben Berger.

19 Q So am I correct that this was a nonexclusive license
20 agreement that you're alleging?

21 MR. LEAVITT: Objection to form. Exclusive as
22 to what?

23 A I don't understand. What do you mean nonexclusive or
24 exclusive?

25 Q (By Ms. Power) Earlier I asked you if this alleged license

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1 agreement was exclusive or nonexclusive and you stated that
2 it was never discussed; is that right?

3 A That's right.

4 Q And so, my question is whether this was therefore a
5 nonexclusive agreement, because you're saying that under
6 this alleged agreement Milagros was allowed to use other
7 manufacturers.

8 A We didn't use the term exclusive during our discussion. We
9 only say that in order for BETTA brand to take off in the
10 United States, just the product from PVL wouldn't be enough
11 to be full collection for the customer to be interested in.

12 So we agreed that we can use products from Flicker,
13 Topper, as well as some socks suppliers to produce products
14 carrying BETTA brand in order to help with sales and help
15 the market exposure for BETTA. So that's how we discussed,
16 and we didn't use the term exclusive or nonexclusive.

17 Q In the same response in Exhibit 6, there's reference to use
18 being made by other manufacturers with the explicit
19 permission of PVL. Do you see that reference?

20 A Yes.

21 Q What is meant by the explicit permission of PVL?

22 A During our initial discussion that I request Irene to show
23 me all the products made by other manufacturers, that's
24 what I meant.

25 And later on we -- because she has more knowledge

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1 clarify? Are you talking about identity of them?

2 A Can you clarify the question? You mean learned their
3 existence or learned their name or what?

4 Q (By Ms. Power) Yes. Have you learned more about them?
5 Have you learned who they are?

6 A I know Flicker, I know Topper.

7 Q Have you learned any more of them through this lawsuit?

8 A You mean more manufacturer?

9 Q Yes.

10 A Not through this lawsuit.

11 Q How did you learn about more of them?

12 A Through my lawyers in China.

13 MS. POWER: This is seven.

14 (EXHIBIT NO. 7 MARKED)

15 Q (By Ms. Power) Mr. Wong, you've been handed what's been
16 marked as Exhibit 7. I'll ask you to review the document
17 and let me know if you recognize it.

18 A Yes.

19 (Pause in proceedings.)

20 A Yes.

21 Q (By Ms. Power) Is this document -- I'm sorry. Do you
22 recognize the document?

23 A Yes.

24 Q Okay. What is it?

25 A It is some invoice -- well, first of all, this is

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1 application for the BETTA brand by Cindy. These are the
2 legal documents between us and COJK, isn't it?

3 Q Am I correct that this is a copy of Progress' application
4 to register BETTA as a trademark in the United States?

5 A Yes.

6 Q Did you speak with Irene before applying to register the
7 BETTA mark in the United States?

8 A I did.

9 Q What did you speak to her about?

10 A I told her we are registering the brand.

11 Q When did you talk to her about that?

12 A During the period before she incorporated Milagros.

13 Q So before Irene incorporated Milagros as a company, you
14 spoke to her --

15 A Yeah.

16 Q -- about Progress applying to register the BETTA mark in
17 the United States?

18 A Right.

19 Q Is that correct?

20 A Correct.

21 Q And am I correct that this application was filed on
22 June 15, 2004?

23 A Yes.

24 Q At any time after Milagros was incorporated but before this
25 application was filed, did you speak with Irene about

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1 applying to register the mark in the U.S.?

2 A You mean after Milagros incorporated and before this date?

3 Q Yes.

4 A Well, we talked about it occasionally, but I don't remember
5 exact date.

6 Q How many times did you speak with her about it?

7 A I don't remember.

8 Q Was it one or was it 50? Do you have any sense?

9 A A few times. I don't remember exactly how many times.

10 Q Would that be about two to three or five to 10?

11 A More than two to three. More than five to 10. Maybe -- I
12 don't know. Occasionally, we talked. We used to talk
13 every day, and especially when she was setting up the
14 incorporating Milagros.

15 I don't remember how many times during that
16 conversation -- during that period of time we discussed it,
17 but definitely we discussed it quite a few times that we
18 will register the brand.

19 Q Did you agree to register the mark on behalf of Milagros?

20 A No.

21 Q Did you ever speak to Irene about registering the mark on
22 behalf of Milagros?

23 A No.

24 Q It was never raised by Irene?

25 A No.

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1 Q Am I correct that you hired an attorney to help file your
2 application for registration in the United States?

3 A Correct.

4 Q Did you work directly with that attorney to provide
5 information for the application?

6 A No. We worked through our attorney in Hong Kong.

7 Q Was that you who worked through your attorney in Hong Kong
8 or was that Ms. Wong as well?

9 A Both. Ms. Wong as well.

10 Q On this first page of Exhibit 7, under the second line
11 that's across the page it says what the application is for
12 and it reads, "Clothing, footwear, and headgear." Do you
13 see that reference?

14 A Mm-hm.

15 Q Is it your understanding that that is what Progress was
16 applying to register the BETTA mark for use on?

17 A Yes.

18 Q Isn't it correct that the application has now been amended
19 to only apply to footwear?

20 A I think so.

21 Q On this application it says, "First Use: March 21, 2003."
22 Do you see that reference?

23 A Mm-hm.

24 Q How was the mark first used on March 21, 2003?

25 A I don't remember now.

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1 MR. LEAVITT: Objection.

2 A -- sitting right now.

3 MR. LEAVITT: Objection to the form of the
4 question. You can answer.

5 A I have all the information back in my office that in order
6 for me to say it in here March 21, 2003, first use, I'm
7 sure that we have appropriate information and it's in fact
8 true that we made that first use. And if you want to ask
9 me specifically what it was, who we sold to, I can't
10 remember every single detail.

11 We made six to eight million pairs of slippers a year
12 and thousands of orders, and I don't remember five years
13 ago this particular order or whatever shipment it was, but
14 all I knew is the true and the fact that we gave the
15 information to the law firm to apply this application.

16 Q (By Ms. Power) It also indicates that first use in
17 commerce. It says, "Use In Commerce: January 15, 2004."
18 Do you see that reference?

19 A Mm-hm. Yes.

20 Q Can you explain how the BETTA mark was allegedly first used
21 in commerce on January 15, 2004?

22 MR. LEAVITT: Objection to the form. You can
23 answer.

24 A It's the same answer as I answered earlier.

25 Q (By Ms. Power) So you don't know; is that correct?

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1 A I don't remember.

2 Q Do you know who made that first use in commerce?

3 A I don't remember.

4 Q Do you know what product it was?

5 A Slippers, definitely.

6 Q But beyond slippers, do you know any details?

7 A No.

8 Q Do you know where that first use was in commerce?

9 A I don't remember.

10 Q Isn't it true that you're claiming that Progress' first use
11 of the BETTA mark in commerce in the U.S. was through your
12 shipment of slipper samples to Milagros?

13 A I don't remember. So much detail you're talking, and I
14 can't remember such detail.

15 Q I'm asking --

16 A And we only -- in the States, we only made shipments to
17 Milagros and that's the first use using BETTA. And the
18 reason for that was we set up Milagros, financed Irene to
19 set up Milagros so we can start distributing BETTA, and
20 they are the one and only one we distribute BETTA brand.

21 Q So am I correct then that you're claiming that the first
22 use of the BETTA mark in commerce in the U.S. was through
23 Milagros?

24 A Correct.

25 Q Was that through the shipment of slipper samples to

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1 Milagros?

2 A I don't remember if it was samples or shipment.

3 Q So then you don't know if any samples that you sent to
4 Milagros were ever actually ordered; correct?

5 MR. LEAVITT: Objection.

6 A That's not the way I said. I don't remember whether
7 shipment was samples or -- I don't remember the details of
8 that shipment. All I knew was we made a shipment to
9 Milagros at that time to be distributed.

10 Q (By Ms. Power) So is there anything else you can tell me
11 about what you remember, sitting here right now, about the
12 alleged first use of the BETTA mark in commerce in the
13 U.S.?

14 A Not the details. It's the facts are here.

15 Q What are the second and third pages of this exhibit?

16 A So, what... ?

17 Q I'm asking you what this is, the second and third pages.

18 A This is the trademark record for the registered trademark
19 in Hong Kong.

20 Q And then the remaining pages starting with what's Bates
21 labeled in the lower right corner as PVL 05717, what is
22 that?

23 A 05717?

24 Q If you look in the lower right corner of the document it
25 says PVL 05717?

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1 A No.

2 (EXHIBIT NO. 10 MARKED)

3 Q (By Ms. Power) Mr. Wong, I'll give you a moment to take a
4 look at what's been marked as Exhibit 10. And once you've
5 had a chance to review it, please let me know if you
6 recognize the document.

7 A Yes. This is an application.

8 Q You said that you recognize the document; is that right?

9 A That's right.

10 Q Was this submitted with your application for registration
11 of the trademark in the United States?

12 A That's right.

13 Q On the third page of the document, it's PVL 5821, it shows
14 that it's signed by Lin Chuk Hung?

15 A That's right.

16 Q And you testified earlier that Lin Chuk Hung is who we've
17 been referring to as Lynn Wong; is that correct?

18 A Correct.

19 Q On the first page of Exhibit 10, the second full paragraph
20 states that the applicant, Progress, is using the mark in
21 commerce and that a specimen showing the mark as used in
22 commerce is submitted with this application. Do you see
23 that reference?

24 A Yes.

25 Q If you turn to the last page, it's PVL 5823, is that the

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1 A We set up our own company with the help by Tom Williams.
2 He's got all the experience to set up a company and do the
3 distribution.

4 Q Isn't it true that Progress did not actually plan to
5 distribute products but planned to somehow sell the BETTA
6 mark?

7 MR. LEAVITT: Objection. Go ahead.

8 A No.

9 (EXHIBIT NO. 12 MARKED)

10 Q (By Ms. Power) Mr. Wong, I'll let you review what's been
11 marked as Exhibit 12, and let me know if you recognize the
12 document.

13 A Yes.

14 Q Am I correct that this is an e-mail from you to Irene --

15 A Correct.

16 Q -- on November 22, 2006?

17 A Correct.

18 Q And in this e-mail you state, "Dear Irene, I am very sorry
19 to let you know that Kim and I are selling the BETTA brand
20 (in the USA) to another company."

21 Do you see that reference?

22 A Yes.

23 Q Who is the Kim that's referenced here? Is that Kim Gray?

24 A Kim Gray.

25 Q Is that the same Kim Gray that you used to do business

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1 what kind of response she may have, so I was trying to do
2 it in a nice way.

3 Q Why were you worried about Irene's response?

4 A Well, I was worried that we might hurt her feelings or
5 something.

6 Q What do you mean?

7 A Well, she can be, from what I know her, she can be
8 emotional, so I didn't want to hit her hard saying, 'Hey,
9 we're going to terminate you,' so I tried to, based on my
10 English level, to say it as nice as possible.

11 Q Why doesn't it say anywhere in here that this alleged
12 license that she had was terminated?

13 MR. LEAVITT: Objection; asked and answered. Go
14 ahead.

15 A Well, from my knowledge, that was what I meant.

16 Q (By Ms. Power) What did you understand your termination of
17 the alleged license agreement to mean for Milagros' sale of
18 products with the BETTA mark during 2007?

19 A Sorry. I didn't understand what you asked.

20 Q Based on this e-mail, you're saying that your attempt was
21 to express that you were terminating the alleged license
22 with Milagros; is that right?

23 A Correct.

24 Q What was your understanding of what that would mean for
25 Milagros' sale of products bearing the BETTA mark during

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1 the remainder of 2006 and during 2007?

2 MR. LEAVITT: Objection; asked and answered.

3 Prior to the break you asked him these questions. Go
4 ahead.

5 A You mean how Milagros sells in 2007?

6 Q (By Ms. Power) Mm-hm.

7 A Well, that's what I put down in the e-mail, I would let her
8 sell the spring, summer item and finish it.

9 Q Where does it say that?

10 A That's effective some time in fall and winter, so that
11 means she doesn't have to develop her full winter range.

12 Q Is that what the e-mail says?

13 A That's what my intention.

14 Q But that's not what it says; is that correct?

15 MR. LEAVITT: Objection.

16 A It is what I said.

17 Q (By Ms. Power) Where does it say that Milagros can
18 continue to sell products bearing the BETTA mark during
19 2007?

20 A Well, I said they will stop -- they have to stop selling
21 for fall, winter 2007.

22 Q That's what you believe this says?

23 A Well, based on my language skill, that's what I expressed.

24 Q But you understood at the time that you sent this in
25 November 2006 that Milagros had stock of products bearing

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1 the BETTA mark; correct?

2 A Yes. Fall, spring, summer.

3 Q And at this time you were still manufacturing products for
4 Milagros bearing the BETTA mark; is that correct?

5 A Yes. Fall, spring, summer as well.

6 Q And were those products delivered --

7 A Yes.

8 Q -- after the date --

9 A Yes.

10 Q -- of this e-mail?

11 A Yes.

12 Q So is it my understanding -- is my understanding correct
13 that as of fall and/or winter of 2007, Milagros would no
14 longer be able to sell products bearing the BETTA mark in
15 the U.S.?

16 A That's what I was saying.

17 Q What did you understand that to mean for any remaining
18 stock that Milagros may have of products bearing the BETTA
19 mark as of fall or winter 2007?

20 A We never had a chance to discuss it.

21 Q But what was your understanding when you sent this e-mail?

22 A I was open for discussion.

23 Q Is that what this says?

24 A That's what I meant.

25 Q Did you say that here?

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1 A No.

2 Q What did you mean when you said that "we have to use a
3 different brand for you in the future"?

4 A "We" means Milagros and Progress Vantage's relationship,
5 that either we keep going, ship them I. Torres products or
6 they get orders for private label.

7 Q So was it your intention to continue manufacturing products
8 for Milagros even though you were terminating the alleged
9 license agreement with Milagros?

10 A Yes.

11 MR. LEAVITT: Objection, but that's fine.

12 MS. POWER: This is Exhibit 13.

13 (EXHIBIT NO. 13 MARKED)

14 Q (By Ms. Power) Mr. Wong, you've been handed what's been
15 marked as Exhibit 13. Please let me know, after you've
16 reviewed it, if you recognize the document.

17 A Yes.

18 Q What is it?

19 A It is the order detail from between 2003 and 2006.

20 Q Order detail for whom?

21 A For Milagros.

22 Q So am I correct in understanding that this is a listing of
23 invoices for products ordered by Milagros and shipped by
24 Progress between 2003 and 2006?

25 A Correct.

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1 Q The first two invoices listed have a date of February 2,
2 2003, do you see that?

3 A Yes.

4 Q Do you believe that those dates are accurate?

5 A I didn't prepare them, so...

6 Q Who prepared this document?

7 A My staff. My accounting staff.

8 Q Who specifically?

9 A My accounting department got a couple of people, so I don't
10 know which one.

11 Q Did you review this document before it was produced in
12 discovery in this case?

13 A Yes.

14 Q And again, is it your belief that this is accurate?

15 A I believe so.

16 MS. POWER: This is Exhibit 14.

17 (EXHIBIT NO. 14 MARKED)

18 Q (By Ms. Power) Mr. Wong, if you can look at Exhibit 14
19 side by side with Exhibit 13. And I'm sorry. I'll give
20 you a moment to review Exhibit 14, and please let me know
21 if you recognize the document.

22 A Mm-hm. Yeah.

23 Q What is Exhibit 14?

24 A Our invoice to Milagros.

25 Q Okay. At the top of the first page of Exhibit 14 does it

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1 say Invoice No. MIL 275/03?

2 A Yes.

3 Q Does that correspond to Exhibit 13, the first invoice,
4 where it says MIL 275/03?

5 A Yeah. It looks like it.

6 Q What is the date on the invoice which is Exhibit 14?

7 A 2004, February 2nd.

8 Q So do you believe that Exhibit 13 has an error where it
9 says that Invoice No. MIL 275/03 was in 2003?

10 A Yeah. That's a typo because the invoice was generated --
11 the shipment was made in December '03, that's why you carry
12 an invoice -- oops. Is that all right I scratch on it?
13 Sorry.

14 MR. LEAVITT: Can we go off the record for a
15 second?

16 MS. POWER: Yes.

17 (Discussion off the record.)

18 MS. POWER: Back on the record.

19 Q (By Ms. Power) So my question was, I believe, just
20 clarifying that there was an error in the date on
21 Exhibit 13 where it references this invoice MIL 275/03 as
22 being February 2, 2003, and in fact it was dated
23 February 2, 2004; is that correct?

24 A Yes. That's an error.

25 Q Okay. And am I correct that this is an invoice for

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1 products that were shipped to Milagros on behalf of a
2 customer called Blossom's? If you see in the marks and
3 numbers column.

4 A Yes. Blossom's, yes.

5 Q If you can turn to the second page of Exhibit 14, which is
6 PVL 187.

7 A Mm-hm.

8 Q And this is Invoice No. 304/03. Do you see that reference?

9 A Yes.

10 Q Is that also a reference to what is Invoice No. MIL 304/03
11 on Exhibit 13?

12 A Mm-hm.

13 Q Is the date also wrong for that invoice on Exhibit 13?

14 A Yeah, I think so.

15 Q So the date should, in fact, be February 2, 2004; is that
16 correct?

17 A Yeah.

18 Q Am I correct that this invoice 304/03 was also a shipment
19 to Milagros for Blossom's?

20 A Yeah.

21 Q If you can keep Exhibit 13 out.

22 A Mm-hm.

23 Q The next invoice that's referenced is September 17, 2004?

24 A Mm-hm.

25 Q So am I correct that that would be the next shipment that

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1 was made to Milagros of products after these first two that
2 we referenced?

3 A Yes.

4 Q In between the orders that are referenced here for products
5 that Progress shipped to Milagros, am I correct in
6 understanding that there were ongoing shipments of samples
7 to Milagros?

8 A Yes.

9 Q Do you know whether Exhibit 13 includes any shipments of
10 samples to Milagros?

11 A I don't know. I didn't prepare the document.

12 Q As of this date, Milagros has paid all of the invoices from
13 Progress; is that correct?

14 A Correct.

15 Q Do you recall that in March 2006 Irene contacted you about
16 a letter that she got from an attorney representing a
17 company called Neet Feet?

18 A Yes.

19 Q And Irene asked you to help her figure out how to respond
20 to that letter; is that right?

21 A Correct.

22 Q What was the issue that was raised by Neet Feet, to your
23 recollection?

24 A Neet Feet was claiming that Milagros -- because Milagros is
25 distributor and printed on the packaging, so they sent a

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1 Q And if I recall correctly, you testified that there was not
2 a discussion between you and Irene as to the duration of
3 that agreement --

4 A Correct.

5 Q -- is that right?

6 But you also testified that you expect to review it
7 every two years; correct?

8 A Correct.

9 Q Did you ever tell Irene that?

10 A No.

11 Q Was it ever written anywhere?

12 A No.

13 Q Did you, in fact, review this alleged agreement within two
14 years?

15 A Well, I think it was more than three years -- or more than
16 two years after I actually reviewed it. I only review the
17 year -- that was 2006? What was the date I sent her an
18 e-mail?

19 Q Are you referencing the e-mail that was November 2006?

20 A Yeah. I told her that I was terminating her contract.
21 That was later that year I sent her the e-mail, yeah. That
22 was 2006. So I was reviewing her in early months of 2006,
23 and then I realized Milagros wasn't doing a good job.

24 Q What did you review?

25 A The sales figure.

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1 Q What did you find?

2 A It is a lot lower than our expectation.

3 Q What was your expectation?

4 A We were expecting they can do approximately a million U.S.
5 dollar of sales in two years.

6 Q I'm sorry. You were expecting that Milagros could sell --

7 A Generally meeting U.S. dollar sales by the time of 2000 --
8 end of 2005.

9 Q I'm going to have to walk backwards then. So your
10 expectation was that within two years Milagros would be
11 able to generate a million dollars in U.S. sales?

12 A Yes.

13 Q So you were looking at the end of 2005?

14 A Mm-hm.

15 Q So am I correct in understanding that this oral license
16 agreement was in effect at some point by the end of 2003?

17 A Well, as I said earlier, there's no exact date when it was
18 in effect. It has always been talked about that I thought
19 Irene understood when she sent me the e-mail before these
20 licensing problems regarding royalty and license fee.

21 Q Can you turn back to what was marked as Exhibit 5?

22 A Yes.

23 Q Is that the e-mail that you're referencing dated October
24 2003?

25 A Yes.

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1 Q So was the license agreement in place at the time of this
2 e-mail?

3 MR. LEAVITT: Objection. You've asked that
4 question five times.

5 A There's no specific date. But through this e-mail I
6 understood that she fully understand our position, who was
7 the owner of the brand and who was doing the
8 distributionship.

9 Q (By Ms. Power) So as of this date of October 2003, you
10 felt that there was an understanding regarding the
11 agreement; is that right?

12 A Even before that, just confirming it.

13 Q All right. So at least as late as October 2003, this
14 alleged license agreement was in place; is that right?

15 A Yes.

16 Q Okay. Is it true that the name Progress never appeared on
17 any of the products bearing the BETTA mark that were sold
18 in the United States?

19 A Goddess appeared in the back of the insole.

20 Q If I can back up then. Is it true that the name Progress
21 never appeared on any product bearing the BETTA mark --

22 A Correct.

23 Q -- that were sold in commerce in the U.S.; correct?

24 A Correct.

25 Q But you said that Goddess appeared?

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